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Attorneys for Plaintiff
DEENA DEARDURFF SCHMIDT

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF CALIFORNIA

DEENA DEARDURFF SCHMIDT, Plaintiff, v. BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, SAN DIEGO STATE UNIVERSITY, JEFF SCHEMMEL, DOES 1-15, Defendants.	CASE NO. 07-CV-2343DMS(WMC) **DECLARATION OF PLAINTIFF'S COUNSEL IN SUPPORT OF HER EX PARTE APPLICATION FOR ORDER COMPELLING DEFENDANTS TO PRODUCE UNREDACTED COPIES OF ALL DOCUMENTS CONTAINED IN INITIAL DISCLOSURES**

I, THOMAS TOSDAL, declare:

1. I am an attorney licensed to practice in the State of California and a partner of Tosdal, Smith, Steiner & Wax, attorneys of record for Plaintiff DEENA DEARDURFF SCHMIDT. As such I have personal knowledge of the facts referenced below.

2. Plaintiff applies to the Court *ex parte* for an order compelling Defendants BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, SAN DIEGO STATE UNIVERSITY, and JEFF SCHEMMEL to produce unredacted copies of all documents produced with their Federal Rules of Civil Procedure Rule 26(a) initial disclosures by April 16, 2008, before the early

neutral evaluation settlement conference scheduled to be held on April 21, 2008.

3. Counsel for Defendants received notice of this *ex parte* application on Friday, April 4, 2008, and has indicated that he does not oppose this application.

4. This action was filed in the San Diego Superior Court and removed by Defendants to District Court.

5. On February 25, 2008, both parties timely exchanged witnesses, documents and other information pursuant to the FRCP 26(a) initial disclosure requirements.

6. A review of Defendants' initial disclosures revealed that certain documents produced, specifically emails and correspondence from students and parents, contained redactions. The substance of the communications was not redacted but Defendants redacted the names of the persons who authored them.

7. Counsel subsequently met and conferred with counsel for Defendants by telephone requesting they produce un-redacted copies of certain documents produced in Defendants' initial disclosures.

8. By letter dated March 10, 2008, Defendants' counsel indicated that they would provide "unredacted copies of those documents as soon as the University has complied with its FERPA obligations."

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9. By letter dated March 25, 2008, counsel again requested they produce "unredacted copies of all documents contained in the initial disclosures in advance of the settlement conference" and that if no agreement could be reached, the issue would be raised with Magistrate Judge William McCurine.

10. The issue of the redacted copies of documents produced by Defendants in their initial disclosures was raised with Magistrate Judge McCurine during the April 4, 2008, conference call.

11. Counsel for Defendants indicated that FERPA's confidentiality requirements, a federal privacy law protecting the disclosure of educational records, may apply to the documents which would require either parental/student consent or a court order before they produced the unredacted documents.

12. Counsel indicated that he would seek an order from the Court *ex parte* compelling the disclosure of the unredacted documents so that Plaintiff will be fully prepared for her participation in the settlement conference scheduled to be held on April 21, 2008.

13. Counsel for Defendants indicated that he would not oppose the *ex parte* application.

14. Counsel have met and conferred with Defendants' counsel and unredacted copies of the documents cannot be produced in time for the settlement conference unless a court order is issued by this Court *ex parte*.

15. Plaintiff will be prejudiced if the *ex parte* motion is heard according to the regular noticed motion procedures because Plaintiff will not be able to properly prepare for and fully

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participate in the early neutral evaluation settlement conference scheduled for April 21, 2008, without the unredacted documents.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 7th day of April 2008 at San Diego, California.

S/Thomas Tosdal
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